U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34297134

Date: FEB. 21, 2025

Appeal of Immigrant Investor Program Office Decision

Form I-526, Immigrant Petition by Alien Entrepreneur

The Petitioner seeks classification as an immigrant investor pursuant to the Immigration and Nationality Act (the Act) section 203(b)(5), 8 U.S.C. § 1153(b)(5) (2019).[1] This fifth preference (EB-5) classification makes immigrant visas available to aliens who invest the requisite amount of qualifying capital in a new commercial enterprise (NCE) that will benefit the U.S. economy and create at least 10 full-time positions for qualifying employees. Aliens may invest in a project associated with a U.S. Citizenship and Immigration Services (USCIS) designated regional center. *See* Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act of 1993, Pub. L. No. 102-395, 106 Stat. 1828 (1992), as amended by section 575 of Pub. L. No. 114-113 (2015).

The Chief of the Immigrant Investor Program Office denied the petition, concluding that the record did not establish the lawful source of the funds the Petitioner invested in the NCE. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3. On appeal, the Petitioner submits additional evidence and asserts that the Chief failed to provide a substantive discussion of probative evidence she submitted with the initial filing and in response to a notice of intent to deny (NOID).

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Chief's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

An alien may be classified as an immigrant investor if they invest the requisite amount of qualifying capital in an NCE. They may invest the required funds directly in an NCE or through a regional center,

[1] On March 15, 2022, the EB-5 Reform and Integrity Act of 2022 was signed into law, revising general eligibility requirements, substantially reforming and codifying the Regional Center Program in INA 203(b)(5), and adding significant new integrity provisions. *See* Section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). As the Petitioner filed her petition prior to the enactment of the RIA, the relevant law then in existence governs this appellate adjudication.

as the Petitioner has done in this case. Regional centers can pool immigrant (and other) investor funds for qualifying projects that create jobs directly or indirectly. 8 C.F.R. § 204.6(j)(4)(iii) (2019).

An immigrant investor must demonstrate that their invested capital did not derive, directly or indirectly, from unlawful means. 8 C.F.R. § 204.6(e). To show the lawful source of the funds, an investor must submit evidence such as foreign business and tax records or documentation identifying sources of the capital. *See* 8 C.F.R. § 204.6(j)(3). Bank letters or statements corroborating the deposit of funds by themselves are insufficient to demonstrate their lawful source. *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. 169, 195 (Assoc. Comm'r 1998). The record must trace the path of the funds back to a lawful source.[2] *Matter of Ho*, 22 I&N Dec. at 210-11; *Matter of Izummi*, 22 I&N Dec. at 195.

II. ANALYSIS

The Petitioner asserts that she invested $500,000 [3] into [redacted] (the NCE), which is associated with [redacted] a regional center. The NCE proposes to pool $200,000,000 from 400 immigrant investors, funds which will be loaned to two job-creating entities for the renovation, development and new construction of commercial, retail, entertainment, residential and infrastructure projects located in [redacted] Ohio.

The Petitioner provided a Gift Agreement and supporting evidence showing that the source of her investment was a gift from her father in the amount of $580,000. The record documents that her father made two separate transfers of $530,000 and $50,000 from his [redacted] accounts, in May and June 2019, respectively, to an [redacted] account owned by the Petitioner's mother. On these same dates, the Petitioner's mother transferred the funds to the Petitioner's [redacted] account. The record further shows that in June 2019, the Petitioner transferred $550,000 from her [redacted] account to the NCE's designated escrow account at [redacted], which issued a letter confirming receipt of her $500,000 EB-5 investment and associated administrative fees.

The record indicates that the Petitioner's father obtained the $580,000 as two separate dividend payments of $530,000 and $50,000 from his wholly owned company, [redacted] in May and June 2019. The Petitioner provided copies of two company resolutions issued by [redacted] sole director, authorizing the dividend payments, and copies of the company's tax returns and audited financial statements reflecting the payment of dividends in these amounts on the corresponding dates. The Petitioner has consistently stated that the dividend payments were withdrawn from [redacted] brokerage account with [redacted]. She provided a copy of [redacted] brokerage agreement with [redacted] and client account statements showing the withdrawals. The Petitioner also provided evidence showing [redacted] made transfers in the amount of $530,000 and $50,000 to two bank accounts owned by [redacted] which then transferred the funds to the [redacted] accounts owned by her father.

---

[2] These requirements "serve a valid government interest; i.e., to confirm that the funds utilized in the [EB-5] program are not of suspect origin." *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1040 (E.D. Cal. 2001) (holding that a petitioner had not established the lawful source of her funds because, in part, she did not designate the nature of all of her employment or submit five years of tax returns), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

[3] The Petitioner indicates that the job creating entities are in a targeted employment area, and that the required amount of qualifying capital is downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2).

The Chief determined that the Petitioner did not demonstrate the lawful source of the invested funds, concluding that there were "material inconsistencies" in the record regarding the Petitioner's father's employment history, "allegations of unlawful activities" on the part of [redacted] that the Petitioner did not overcome, and insufficient evidence that the funds [redacted] paid to the Petitioner's father as dividends were accumulated through lawful activities.

On appeal, the Petitioner maintains that the Chief misunderstood the nature of the brokerage agreement between [redacted] erroneously assumed the funds in [redacted] brokerage account were comingled with [redacted] own funds, and consequently denied the petition, in part, based on her failure to submit irrelevant evidence related to [redacted] finances. With respect to the allegations of unlawful activities made against [redacted] the Petitioner contends that she addressed these allegations in response to the NOID and that the Chief provided insufficient basis for rejecting her explanations and evidence. The Petitioner also addresses the perceived inconsistencies in the record pertaining to her father's employment history, noting that this issue, which the Chief raised based on information obtained from outside the record of proceeding, was not raised in the NOID. Finally, regarding [redacted] lawful business activities, the Petitioner emphasizes that the Chief failed to explain why [redacted] independently audited financial statements and income tax returns were not sufficient to meet her burden to show that the company accumulated its earnings through lawful activities.

Upon review, we will withdraw the Chief's decision and remand the matter for further review and entry of a new decision.

If a decision will be unfavorable to a petitioner and is based on derogatory information considered by USCIS and of which the petitioner is unaware, the petitioner must be advised of this fact and offered an opportunity to rebut the information before a decision is rendered. 8 C.F.R. § 103.2(b)(16)(i). A determination of statutory eligibility shall be based only on information contained in the record of proceeding which is disclosed to the petitioner. 8 C.F.R. § 103.2(b)(16)(ii).

Moreover, an officer's written decision must explain the specific reasons for denial. *See* 8 C.F.R. § 103.3(a)(1)(i). This explanation should be sufficient to allow a petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See, e.g. Matter of M-P-* 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

Here, the Chief's decision was based, in part, on information relating to [redacted] that is not part of the record of proceeding. First, in the NOID and in the denial, the Chief referenced a [redacted] press release dated from 2018, which alleged that [redacted] had profited from an employee's unlawful use of insider information and that the matter was being investigated by law enforcement. Although the Chief described the contents of that press release in the NOID, she did not include a copy of the press release in the record of proceeding. Further, the Chief's decision references, for the first time, information from an "open source" indicating [redacted] may hold funds for a "sanctioned entity." While the decision states the Chief did not deny the petition based on this open-source information, the potentially derogatory information was evidently considered by the Chief in reaching a determination regarding the lawful source of funds in this case, was not disclosed to the Petitioner in a NOID or RFE and was not incorporated into the record of proceeding.

In addition, the Chief's decision introduces for the first time information regarding the Petitioner's father's employment history that he had provided on a nonimmigrant visa application submitted to the U.S. Department of State. This potentially derogatory information was not mentioned in the NOID and therefore the Petitioner did not have an opportunity to rebut the information before the decision was rendered.

Finally, we acknowledge the Petitioner's assertions that the Chief's decision lacks a substantive discussion of certain relevant evidence she provided in support of the petition and in response to the NOID, including, but not limited to, evidence documenting [redacted] business activities, the brokerage agreement it maintained with [redacted] and the nature of that relationship, and the status of prior allegations of unlawful activity against [redacted] We agree that the decision lacks sufficient explanation of why much of the Petitioner's evidence was deemed to have insufficient relevance or probative value.

To ensure fair and complete consideration of the proceedings before us, it is necessary that the record of proceedings contains copies of all evidence considered. The Chief bears the responsibility of ensuring that the record is complete and contains all evidence submitted by the Petitioner and any other evidence considered by the Chief in reaching her decision. *See* 8 C.F.R. § 103.2(b)(1); *cf. Matter of Gibson*, 16 I&N Dec. 58, 59 (BIA 1976).

Therefore, for the reasons discussed, we will withdraw the Chief's decision and remand this matter. On remand, the Chief should identify and incorporate any documents, which may have been inadvertently omitted from the record of proceeding, before reviewing the entire record, including the Petitioner's brief and supplemental evidence submitted on appeal, and entering a new decision. If the Chief cannot supplement the record with the missing materials, and if the new decision will be based in part, on materials not submitted by the Petitioner or based on any issues not already raised in the prior NOID, she should issue a new RFE or NOID, granting the Petitioner a reasonable opportunity to respond, before issuing the new decision. That new decision, if unfavorable, shall include a sufficiently detailed and substantive analysis of the evidence to explain the specific reasons for denial, as required by 8 C.F.R. § 103.3(a)(1)(i).

ORDER: The Chief's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.